

Proposed revision to LCw04a
By Holly Franz
On behalf of NorthWestern Energy
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For purposes of this section, adverse effects analysis is specific to the proposed change and the department may not use the legal availability analysis in 85-2-311(1)(a)(ii) to create a presumption of adverse effects DETERMINATION THAT WATER IS NOT LEGALLY AVAILABLE PURSUANT TO 85-2-311(1)(A)(ii) DOES NOT MEAN THAT AN ADVERSE EFFECT WILL OCCUR.

The proposed substitution language is intended to be similar to the language found in 85-2-360(3)(a) (Ground Water Appropriation Right In Closed Basins) which provides "the prediction of net depletion does not mean that an adverse effect on a prior appropriator will occur." In the above paragraph, it is the lack of legally available water that does not mean an adverse effect will occur. The reference to "a prior appropriator" was not included in the above paragraph because changes may also adversely affect junior appropriators.